

REMARKS/ARGUMENTS

The Office Action mailed October 4, 2005, has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Claim Rejections – 35 USC §102

In paragraph 5 of the Office Action the Examiner rejected Claims 1-3, 5-9 and 14-16 under 35 USC §102(e) as being anticipated by Webber (US 2004/0101151).

With a prior Amendment, mailed June 21, 2005, the Applicants submitted a DECLARATION OF JON C. TAENZER UNDER 37 CFR §1.131. In the Declaration Mr. Taenzer states, "Prior to September 17, 2002, I and my co-inventors conceived and reduced to practice the invention taught in the present patent application and claimed in at least the independent claims which are now in the application, namely Claims 1, 14, and 24."

In the June 21, 2005 amendment Applicants explained that the Webber reference was filed September 17, 2003 and claims the benefit of a provisional patent application filed September 17, 2002. Accordingly, Applicants argued that the Webber reference was overcome by Mr. Taenzer's Declaration under 37 CFR §1.131.

In paragraphs 1-4 of the present Office Action the Examiner stated that Mr. Taenzer's Declaration was considered but is ineffectual to overcome the Webber reference. The Examiner stated that Mr. Taenzer's declaration failed to provide sufficient proof that the Model 880 earpiece is that exact earpiece which is described in the claims. Also, the Examiner, in paragraph 4 of the Office Action stated that Mr. Taenzer has failed to provide as evidence a drawing having a date prior to September 17, 2002 which illustrates the Model 880 earpiece.

Applicants herewith submit a SECOND DECLARATION OF JON C. TAENZER UNDER 37 CFR §1.131. This Second Declaration, together with the prior Declaration,

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overcomes the Examiner's objections to the prior Declaration. Accordingly, Applicants' claims are not anticipated by the Webber reference.

Claim Rejections – 35 USC §103

In paragraph 6 of the Office Action the Examiner rejected Claim 4 under 35 USC §103(a) as being unpatentable over Webber (US 2004/0101151) in view of Connors (US 2002/0181728 A1). As explained above, the Webber reference is overcome by Mr. Taenzer's Declarations under 37 CFR §1.131.

In paragraph 7 of the Office Action the Examiner rejected Claim 10 under 35 USC §103(a) as being unpatentable over Webber (US 2004/0101151) in view of Nassimi (US 2004/0062412). As explained above, the Webber reference is overcome by Mr. Taenzer's Declarations under 37 CFR §1.131.

In paragraph 8 of the Office Action the Examiner rejected Claims 13, 18, and 22 under 35 USC §103(a) as being unpatentable over Webber (US 2004/0101151) in view of Nassimi (US 2004/0062412). As explained above, the Webber reference is overcome by Mr. Taenzer's Declarations under 37 CFR §1.131.

In paragraph 9 of the Office Action the Examiner rejected Claims 11-12 and 23-25 under 35 USC §103(a) as being unpatentable over Webber (US 2004/0101151). As explained above, the Webber reference is overcome by Mr. Taenzer's Declarations under 37 CFR §1.131.

In paragraph 10 of the Office Action the Examiner rejected Claim 17 under 35 USC §103(a) as being unpatentable over Webber (US 2004/0101151) in view of Stonikas (US 2002/0025055). As explained above, the Webber reference is overcome by Mr. Taenzer's Declarations under 37 CFR §1.131.

In paragraph 11 of the Office Action the Examiner rejected Claims 19, 20 and 21 under 35 USC §103(a) as being unpatentable over Webber (US 2004/0101151) in view of Keliiliki (US 5,412,736). As explained above, the Webber reference is overcome by Mr. Taenzer's Declarations under 37 CFR §1.131.

In paragraph 12 of the Office Action the Examiner rejected Claim 26 under 35 USC §103(a) as being unpatentable over Webber (US 2004/0101151) in view of Redmer (US 2004/0037444). As explained above, the Webber reference is overcome by Mr. Taenzer's Declarations under 37 CFR §1.131.

Summary

Applicants respectfully request that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account.

Respectfully submitted,

THELEN REID & PRIEST, LLP

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Suvashis Bhattacharya
Reg. No. 46,554

Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640
Tel. (408) 292-5800
Fax. (408) 287-8040